

MAR 10 2003

Before the  
**Federal Communications Commission**  
 Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter of	)	MB Docket No. 03-7
	)	RM- 10596
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	
FM Broadcast Stations.	)	
(Upper Sandusky and Caledonia, Ohio)	)	

To: Assistant Chief, Audio Division, Media Bureau

**COMMENTS IN OPPOSITION TO PROPOSAL**

Franklin Communications, Inc. ("Franklin")', by its attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby files its Comments in Opposition to the proposal of Clear Channel Broadcasting Licenses, Inc. ("Clear Channel") to reallocate Channel 240A from Upper Sandusky to Caledonia, Ohio, and modify the license for Station WYNT(FM), to reflect the change in community, as set forth in the Commission's multiple-docket *Notice of Proposed Rule Making*, DA 03-50, released January 17, 2003 ("NPRM")<sup>2</sup>. In opposition, Franklin shows the following:

**Clear Channel's Proposal Is Not in the Public Interest**

Clear Channel's proposal is a cynical ploy to replace its revenue stream from the sale of advertising in Marion, Ohio, that would be lost if WMRN-FM, Marion (licensed to a Clear Channel subsidiary) should be allowed to move into the Columbus, Ohio, market. To accomplish its plan, Clear Channel would abandon Upper Sandusky, Ohio, leaving only a noncommercial religious station there. As shown, *infra*. Clear Channel would move WYNT to the tiny village of Caledonia because its true purpose is to sell

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<sup>2</sup>Franklin is licensee of WVKO and WSNY, Columbus, OH.

240A  
 2/28/03  
 12:41

advertising in nearby Marion. Clear Channel should not be allowed to manipulate the Commission's allotment rules in this manner. Its proposal should be denied.

### **Caledonia, Ohio**

According to Clear Channel's Petition for Rule Making that is the genesis of this proceeding, Caledonia, Ohio, had a 1990 population of 644, but lost population in the 2000 Census to 578 persons. The NPRM (at footnote 6) indicates that Clear Channel has presented evidence of the community status of Caledonia ("Caledonia is a census designated place with a 2000 U.S. Census population of 578 persons. It has its own mayor and city council, post office, zip code and fire department, school, churches and businesses.") Franklin strongly disagrees that Caledonia is a community for allotment purposes. Caledonia is nothing more than a crossroads with a 2000 population of 578 that could not possibly be considered a community for allotment purposes. Even if one accepts the copies of Internet web pages provided by Clear Channel as "evidence" of community status, there are apparently only 5 businesses in Caledonia excluding the post office and churches. The attached declaration (Exhibit A) of Jody Wigton shows that on March 6, 2003, she telephoned the mayor of Caledonia, Ohio, Dan Schlosser, who informed her that Caledonia is a village that is incorporated as a municipality.<sup>3</sup> Caledonia has a "village council" that meets monthly. Caledonia's mayor is part time as are the village council members. Caledonia has only two part-time employees -- a maintenance employee, and clerk treasurer. Caledonia does not issue business licenses; retailers get vendors' licenses from the county or state.

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<sup>1</sup>Comments are due by March 10, 2003, so this pleading is timely filed.

<sup>3</sup> Clear Channel states that Caledonia is a Census Designated Place, demonstrating Clear Channel's woeful lack of information about the community it desires to serve.

Caledonia does not collect city tax, but they do collect property taxes. They no longer have a police department.<sup>4</sup> They have a contract with the Marion County Sheriff's Depr. Caledonia does **not** have its own fire department, but has a consolidated Volunteer Fire Department with **their** village and four area townships. Caledonia has its own sewer system but does not have a water system. Caledonia gets its water from Ohio American Water Company - billed through Marion. The only services provided to residents are sewer, snow removal, street paving and street lights. The only businesses mentioned by Mr. Schlosser were the Post Office, three bars/eateries, a bank, a small grocery, one gas station/convenience store, one muffler repair and one retail store selling/repairing lawnmowers, doing embroidery work on clothing, and a Harley Davidson shop. According to its mayor, Caledonia has one school and two churches.

In *Gretna, Quincy and Tallahassee, Florida*, 6 FCC Rcd 633 (1991), the Commission refused to find that the community of Steinhatchee, Florida, was a community even **though** it has a post office, its own zip code, a grade school, six churches, a business district with restaurants and other retail outlets and a population of approximately 1,500. Steinhatchee was listed in the 1988 edition of the Rand McNally Commercial Atlas with a population of 800.

In *Neihart, Montana*, 14 FCC Rcd 18977 (1999), the Commission refused to allot an FM channel to Neihart, Montana, even though Neihart had a "mayor, town council, and a town hall, along with its own post office and zip code." Neihart had "many retail businesses, a general store, churches and civic organizations, motel, tavern" and a ski

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<sup>4</sup> Again, contrary to Clear Channel's information on Caledonia.

area. Similarly, in *Pleasant Dale, Nebraska*, 14 FCC Rcd 18897 (1999), the Commission refused to allot a channel to Pleasant Dale, Nebraska, because:

Based on the evidence submitted by the petitioner, we believe that it has failed to establish that Pleasant Dale qualifies as a community for allotment purposes and therefore would not serve the public interest to allot the requested channel. In response to the Notice, petitioner merely states that Pleasant Dale has a mayor, town council, post office, zip code, and several retail businesses including a general store. **It provides no information as to the businesses which it says exist to demonstrate that they are intended to serve the needs of Pleasant Dale as opposed to other areas. This is a critical deficiency** because in past cases, we have rejected claims of community status where a nexus has not been shown between the political, social and commercial organizations and the community in question. See *Gretna, Marianna, Quincy and Tallahassee, Florida*, 6 FCC Rcd 633 (1991) and cases cited therein. We have determined that Pleasant Dale is incorporated, with a population of 253 people. However, while petitioner states that Pleasant Dale has a mayor and city council, it provides no information as to what municipal services this local government may provide to the residents, or the names and addresses of the businesses which it states exist. In addition, petitioner has not provided the names or addresses of any social or civic organizations, schools, libraries or other governmental services which are located within Pleasant Dale. While we acknowledge that Pleasant Dale does have a post office, the Commission has previously held that the existence of a post office is insufficient, by itself, to demonstrate that a place is a community for allotment purposes. See *Broadview, Montana*, MM Docket 99-79, released September 3, 1999 (64 FR 51470, September 23, 1999), and cases cited therein, *Avon, North Carolina*, 14 FCC Rcd 3939 (1999). [Emphasis added]

In this case, Clear Channel merely noted that “Caledonia has its own mayor and city council, its own post office and zip code (43314), at least seven churches and its own retail establishments [footnote omitted]. It also is the home of Caledonia Elementary School, the Caledonia Police Department, and a fire department.” Clear Channel attached a print-out from the internet to support these statements, but did not **provide any information as to the businesses which it says exist to demonstrate that they are intended to serve the needs of Caledonia as opposed to other areas.** As the Commission stated in *Pleasant Dale, Nebraska, supra*, “This is a critical deficiency...”

In light of precedent, the Commission should not in a vacuum find that Caledonia is a community for allotment purposes just because it has a post office. Here, Franklin has shown that Caledonia has only a part-time mayor. It is a place with apparently only five operating businesses, that provides few municipal services. Under these circumstances, the Commission should not find that Caledonia is a community for allotment purposes, and so deny Clear Channel's proposal.

### **Upper Sandusky, Ohio**

The Petition for Rule Making states that Upper Sandusky, Ohio, had a 2000 population of 6,553 persons. There are currently two stations, Clear Channel's WYNT and a noncommercial educational FM station, WXML, licensed to Kayser Broadcast Ministries, Inc. WXML is a 3 kW Class **A** station. That station appears to be merely an extension of a religious organization whose mission seems to be the conversion of its listeners to Christianity. Following is an excerpt from WXML's website, which can be found on the internet at the following address-. [www.wxml.cc/pages/history.htm](http://www.wxml.cc/pages/history.htm):

"Daniel L. Kayser, founder of our radio ministry, assembled several friends together on February 26, 1987, at Nachbar Appliance in Upper Sandusky, to discuss and explore the possibility of starting a new Christian Radio Station in Upper Sandusky, Ohio. The consensus of those in attendance was to proceed with the project. Our goals were to be:

1. A non-profit, non-commercial Christian Radio Station;
2. We intend to provide beautiful Christian inspirational music to the Christian Community;
3. To hopefully plant a seed in the unsaved listeners heart that will change that individual's life for the better;
4. To encourage that new Christians attend and become involved with a local church;
5. To provide news and programming that will be a blessing and have interest to all area residents;

6. To be a focal point for area churches and to assist them in their respective ministries by making announcements of their special events;
7. To operate a "Speaker's Bureau" out of WXML featuring our Officers, members of the Board of Directors and other area Christians who have outstanding testimonies that will be presented to any church requesting a program speaker. These individuals will be available to make presentations before churches, organizations, civic groups, and share information regarding WXML Radio and its goals; and
8. To coordinate Christian concerts and other area activities that will be a blessing to all Christians regardless of their respective religious affiliation."

Saga in no way seeks to denigrate the work performed by WXML or any of the many noncommercial educational broadcasters who feature a religious format. However, here the FCC proposes to remove the last commercial station from Upper Sandusky and leave only a religious station in its place. This is not in the public interest.

### **Comparison of Proposals**

Clear Channel's proposal does not present a preferential arrangement of allotments. Its proposal is judged under *Revision of FM Allotment Policies and Procedures*, 90 FCC 2d 88 (1982). The FM priorities are as follows: (1) first fulltime aural service, (2) second fulltime aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to Priorities (2) and (3). In making its evaluation, the Commission considers the "totality of factors." See *LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995). There will be no first or second aural service. Even assuming *arguendo* the Commission were to find that Caledonia is a community for allotment purposes, allotting Channel 240A to Caledonia as a first service would leave only one service in Upper Sandusky. Therefore, the proposals are equal on Priority 3, and must be evaluated based upon "other public interest matters" – Priority 4. The public interest is not served by removing the only commercial station from Upper

Sandusky -- a community with 6,553 persons -- leaving only a noncommercial religious station there, while allotting Channel 240A to Caledonia, a community of only 578 persons. Clear Channel's proposal would also result in a loss of service to approximately 26,000 persons, according to the NPRM.

In *Sumter, Orangeburg, and Columbia, SC*, 11 FCC Rcd 6376 (1996) the Commission denied a proposal to reallocate and to change the community of license of a Class C1 FM station from the smaller community of Orangeburg (population 13,739) to the larger community of Columbia (population 98,052) because retention of Orangeburg's sixth station outweighed providing Columbia with its fourteenth local transmission service where there would be no actual improvement in technical facilities by the rulemaking petitioner.

In *Royston and Commerce, GA*, 15 FCC Rcd 5676 (2000), under priority (4), the Commission retained an FM station and allotment in the smaller community of Royston (population 2,758) as a first night-time and second local service rather than change the community of license to the larger community of Commerce (population 4,108) as a second full-time station because the larger population did not justify removing the smaller community's only local night-time service.

With regard to evaluating proposals to change community of license, the Commission has stated: "The public has a legitimate expectation that existing service will continue, and this expectation is a factor which we must consider independently against the service benefits that may result from reallocating a channel from one community to another. See *Modification of FM Licenses (on reconsideration)*; 5 FCC Rcd 7094, 7097 (1990); see also *Amendment of Section 73.202(b) (Eatonton and Sandy Springs, Georgia;*

and Anniston and Lineville, Alabama), 6 FCC Rcd 6580 (1991), application for review pending.”<sup>5</sup> The Commission must consider the legitimate expectation of the residents of Upper Sandusky that service from WYNT will continue. WXML is not an adequate substitute for the removal of WYNT from Upper Sandusky, and Clear Channel's proposal should be denied on this ground as well

### **Clear Channel's True Motive for This Proposal Is its Private Interest**

From time to time, the Commission receives requests to allot FM Channels that defy common sense when judged on the statements presented in the pleadings. Often there is a *sub rosa* motive behind the rule making proceeding. One must ask the question, "Why would Clear Channel want to move a station from a community of 6,553 with no competition to a faux community of 578?" Clearly, something fishy is going on here. It is the proximity of Caledonia to Marion, Illinois, where a Clear Channel subsidiary happens to have a station that is about to move to the Columbus market, if Clear Channel has its way. Clear Channel merely desires to replace its lost revenue stream in Marion with its Upper Sandusky station. That might be good business, but it's not in the public's interest

Clear Channel subsidiary Citicasters Licenses, L.P., is licensee of WMRN-FM, Channel 295B, at Marion, Ohio. Caledonia is less than 10 miles from Marion. In another proceeding (MB Docket 02-266), the Commission has proposed reallocating Channel 295B from Marion to Dublin, Ohio, as Channel 294B1, and modifying the WMRN-FM license for operation at Dublin, which is wholly within the Columbus Urbanized Area.

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<sup>5</sup> The application for review was subsequently dismissed, *Eatonton and Sandy Springs, Georgia; and Anniston and Lineville, Alabama*, 12 FCC Rcd 8392 (1997).



The Citicasters Columbus move-in has been opposed by the Committee for Competitive Columbus Radio<sup>6</sup>, Infinity Hroadcast Operations, Inc., and Sandyworld, Inc. **Assuming** that the Commission will rubber-stamp ~~its~~ Columbus move-in, Clear Channel is **now** plotting a way to replace the revenue it will lose from WMRN-FM customers in Marion when WMRN-FM moves into **the** Columbus market. That *is* the true purpose of the instant **proposal**. See ~~the~~ ntached newspaper article (Exhibit **B**) that appeared in the November 22, 2002, edition ~~of~~ the *Marion Star*. It is pure and simple ~~in~~ the private interest of Clear Channel and not in the public's interest at all. Under Priority 4, the Commission can and should consider this as an additional reason not to adopt Clear Channel's proposal.

**Conelusinn**

In light of the above, the Commission should deny Clear Channel's proposal

Respectfully submitted,

**FRANKLIN COMMUNICATIONS, INC.**

By: 

Gary S. Smithwick  
Its Attorney

**Smithwick & Belendiuk, P.C.**  
5028 Wisconsin Ave., N.W.  
Suite 301  
Washington, DC 20016  
(202) 363-4560

March 10, 2003

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<sup>6</sup> Franklin is a member of the Committee

# **EXHIBIT A**

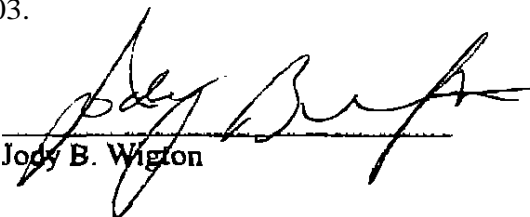
## Exhibit A

### DECLARATION

Jody B. Wigton, declares under penalty of perjury as follows:

I am employed by Franklin Communications, Inc. On March 6, 2003, I telephoned the mayor of Caledonia, Ohio, Dan Schlosser, to gather information to assist the Commission in ascertaining whether Caledonia is a community for allocations purposes. Mr. Schlosser informed me that Caledonia is a village that is incorporated as a municipality. They have a "village council" that meets monthly. Caledonia does not collect city tax, but they do collect property taxes. They no longer have a police department. They have a contract with the Marion County Sheriffs Dept. Caledonia does not have its own fire department, but has a consolidated Volunteer Fire Department with their village and four area townships. Caledonia has its own sewer system but does not have a water system. Caledonia gets its water from Ohio American Water Company - billed through Marion. The only services provided to residents are sewer, snow removal, street paving and street lights. The only businesses mentioned by Mr. Schlosser were the Post office, 3 bars/eateries, a bank, a small grocery, 1 gas station/convenience store, 1 muffler repair and one retail store selling/repairing lawnmowers, doing embroidery work on clothing, and a Harley Davidson shop. Caledonia has one school and two churches. Caledonia's mayor is part time as are the village council members. Caledonia has only two part-time employees - a maintenance employee, and clerk treasurer. Caledonia does not issue business licenses; retailers get vendors' licenses from the county or state.

Executed this 10th day of March, 2003.

  
Jody B. Wigton

# **EXHIBIT B**

MARION STAR 11/22/02

discovered by the driver of a milk wagon shortly before 5 a.m. when his attention was attracted to a box of cakes on the ground near the curb directly in front of the store.

If you would like to contribute a photo or story to Marion Memories, call Brenda Dasegon at 740-375-5150.

## Historical Highlights

Today is Friday, Nov. 22, the 126th day of 2002. There are 19 days left in the year.

Today's Highlight in History: On Nov. 22, 1963, President Kennedy was shot to death while riding in a motorcade in Dallas, Texas. Gov. John B. Connally, in the same limousine as Kennedy, was seriously wounded. Lee Harvey Oswald, suspected of assassinating the president, was arrested.

On this date: In 1718, English pirate Edward Teach — better known as "Blackbeard" — was killed during a battle off the Virginia coast.

In 1890, French president Charles de Gaulle was born in Lille, France.

In 1906, the "SOS" distress signal was adopted at the International Radio Telegraphic Convention in Berlin.

In 1928, "Bolero" by Maurice Ravel made its debut in Paris.

In 1943, President Franklin Roosevelt, British Prime Minister Winston Churchill and Chinese leader Chiang Kai-shek met in Cairo to discuss measures for defeating Japan.

In 1943, lyricist Lorenz Hart died in New York at age 48.

In 1975, Juan Carlos was proclaimed king of Spain.

In 1977, regular passenger service between New York and Europe on the supersonic Concorde began on a trial basis.

In 1980, death claimed actress Mae West at her Hollywood residence at age 87 and

Agent, Chuck Reuter, who got him started with donating.

Wendy Little, who began giving again when a friend Julia Shirk

for The Marion Star.

# Clear Channel proposal would move WMRN-FM signal

BY KURT MOORE  
The Marion Star

MARION — Clear Channel's planned re-arranging of radio stations will not mean the end of Buckeye Country despite a plan to move an FM radio signal to Dublin, according to station management.

Chiccasters Licenses Inc., a subsidiary of Clear Channel Communications, is seeking the Federal Communications Commission's approval to switch Buckeye Country 107.7 WMRN-FM's powerful signal from Marion to Dublin. In exchange, Buckeye Country 107 WMRN-FM would then broadcast at a lower signal strength in Marion. The change, according to documents filed with the Federal Communications Commission, would give Dublin its first hometown radio station.

"We would have a Buckeye Country here," said Clear Channel Marion vice-president Diane Glassmeyer, who said it may or may not be at the same place on

the dial. "The signal would move but the broadcast and format would stay here with a different signal."

"As far as Marion and Morrow (counties) public, they won't see any difference."

According to FCC records, Chiccasters submitted the application on Aug. 21. Public comments were accepted until Oct. 21 and Chiccasters had until Nov. 5 to respond to any comments.

The application also requested permission to move WSRW-FM's signal from Hillsboro to Chillicothe.

Additional information was not available on the FCC's Web site and its media relations department could not be reached for further information, including when the agency expects to make its decision.

Clear Channel Corp. spokeswoman Pam Taylor refused to answer questions, saying that the only thing Clear Channel can confirm while the application is pending is that it had been filed.

Glassmeyer said she cannot estimate when the FCC may make a decision, citing opposition from other broadcasting companies in Columbus that may cause a delay.

Clear Channel also operates Marion stations 1490 WMRN-AM and WDFE 94.3. No changes are planned for those stations.

Glassmeyer said while 107.7 FM would be downgraded to a lower signal strength, Clear Channel plans to build a taller tower and listeners in Marion, Morrow, Crawford and Wyandot counties should not notice a major difference. She said they remain counties crucial to Clear Channel Marion's success.

"The reduced strength may mean listeners in southern Delaware and Union counties may no longer hear the station," she said. "It's great that they can hear us now, but they're not our main audience."

Reporter Kurt Moore:  
740-375-5151 or  
kmoore@mcgannett.com

## Foster father arrested in death of 2-year-old girl

AKRON (AP) — A foster father was charged with involuntary manslaughter Thursday in the death of a 2-year-old girl who police said was left in an attic for about five hours because she was misbehaving.

Letia Harrison died from overheating, a medical examiner ruled.

Elmer G. Lillard, 36, of Akron, turned himself in Thursday at police headquarters, police Lt. Sylvia Trundle said. He was also charged with child endangering

A child's home county retains responsibility in foster care placement even if the family lives in another county, said Louise Miller, a spokeswoman for Summit County Children's Services.

At the time of Letia's death, two of her siblings were also in the Lillard home, along with Elmer and Richelle Lillard's own two children. Miller said the biological children were placed

with relatives after the girl's death.

Trundle said no charges have been filed against the foster mother.

Earlier this year, a judge sentenced a Cleveland woman to three years in prison for leaving a 2-year-old Cuyahoga County foster child with a 15-year-old granddaughter who caused fatal injuries to the boy by shaking him.

spanned nearly 60 years and saw collaborations with century's most influential lyricists — Lorenz Hart and Hammerstein II.

The program will be divided into the two periods: the Rodgers and Hart era and the Rodgers and Hammerstein era. Singers performing include Gabriella, Bill and Carol Becker, Ruth Caldwell, Pat Murphy, Lita, Julia Vanderhoff, Kristina and Mary Mae. Featured pianists Jane Rupp, Carol Wahl, JoAnn R. Susan Dean. Accompanists for the evening include Doria, Patsy Dow and Ruth Caldwell.

The program, performed at the Harding Center for the Arts, also celebrates American Music Month. The program is free and open to the public.

## Salvation Army launches Angel Tree program

MARION — The Salvation Army has launched its Angel Tree campaign. The trees, for children who have lost one or both parents, ensure they have a gift for Christmas.

Each tree has a tag with the child's name, age and birth date, as well as a list of items they need. The tags are to be taped, securely, to the "Angel Tree" where the tag was originally set.

The tags are to be taped, securely, to the "Angel Tree" where the tag was originally set. The tag will help Salvation Army volunteers to make sure each child has a gift.

As of Nov. 20, the following business' and org set up Angel Trees: First Church of the Brethren Credit Union; Foxy Lady Salon; Meijers; Wal-Mart (several locations); Smith Clinic; Verne Hart Insu Y.M.C.A.; City Hall; Marion County Sheriff Dept.; Store; Jobs and Family Services; Connie's Beau (several locations); National City Bank (several I One; Michael's Steak House; Marion Diner; and

Further information can be obtained by contacting Army 740-382-2156; 9 a.m.-noon and 1-4 p.m. from Corrine McAtee, chairman, 740-389-3262

# SALE! SALE! BANAN SPLIT



Dramium

## CERTIFICATE OF SERVICE

I, Sherry Schunemann, a secretary in the law offices of Smithwick & Belendiuk, P.C., hereby certify that on March 10, 2003, copies of the foregoing "Comments in Opposition" were sent via First Class Mail, postage pre-paid to the following:

Ms. Victoria M. McCauley\*  
Allocations Branch, Mass Media Bureau  
Federal Communications Commission  
The Portals II  
445 Twelfth Street, S.W.  
Washington, DC 20554

Marissa G. Repp, Esq.  
F. William LeBeau, Esq.  
Hogan & Hartson, LLP  
555 13<sup>th</sup> Street, NW  
Washington, DC 20004

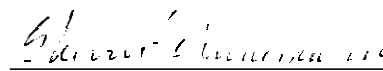
Mark N. Lipp, Esq.  
J. Thomas Nolan, Esq.  
Tamara Y. Brown, **Esq.**  
Shook, Hardy & Bacon  
Suite 800, 600 14<sup>th</sup> Street, NW  
Washington, DC 20005

Jerrold Miller, Esq.  
Miller & Miller P.C.  
P.O. **Box** 33003  
Washington, DC 20033

Lauren **A.** Colby, Esq.  
10 East Fourth Street  
P. O. **Box** 113  
Frederick, MD 21707-0113

Steven **A.** Lerman, Esq.  
Dennis P. Corbett, Esq.  
Jean W. Benz, **Esq.**  
Leventhal, Senter & Lerman PLLC  
2000 K Street, NW. Suite 600  
Washington, DC 20006

"by hand

  
Sherry Schunemann